THE HONOURABLE SRI JUSTICE

***A.GOPAL REDDY***

W.P.No.22308 of 1994

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Dt.23-6-2006

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1. Ramgopal Bajaj and others

..Petitioners

Vs.

1. Municipal Administration, Government of Andhra Pradesh, represented by its Secretary,Secretariat Building, Hyderabad, and others.

..Respondents.

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***A.GOPAL REDDY***

W.P.No.22308 of 1994

ORDER

This is an application under Article 226 of the Constitution of India for issuing a Writ of Certiorari to quash the permit No.475/94 in file No.35/TP6/94 issued by the respondents 1 to 3 in favour of the sixth respondent permitting respondents 4 to 6 to construct a multi-storied building complex in premises No.4-1-1225, King Kothi Road.

Necessary facts which are relevant for disposal of the writ petition are briefly stated thus: Late A.B.H.Khursheed who is the owner and possessor of the premises bearing No.4-1-1225 had constructed two separate buildings, one on the south and another on the north facing the main CC road leaving a passage of about 10 feet in-between the two buildings. The second petitioner purchased the southern side of the building, namely, D.No.4-1-1225/2 in the year 1975 and since then she has been in possession of the said property. Late Khursheed executed a will in favour of his unmarried sister Ms. Khursheed Banu and as per the will, she must enjoy the property during her life time and after her death it must revert back to the management of the sixth respondent-Trust. Miss. Banu in the year 1979 sold away the northern wing of the said building bearing

Municipal No. 4-1-1225/1 King Kothi Road, Hyderabad to the first petitioner and since then he has been in possession and enjoyment of the said property. The Management of the sixth respondent-Trust applied to the Municipal Corporation of Hyderabad (MCH) for permission to construct a multi-storied building over the premises bearing M.No.4-1-1225. On coming to know of the same, the petitioners lodged a complaint before the 2nd and 3rd respondents to stop the illegal construction, but as is of no avail, the petitioners filed the present writ petition contending that granting permission by the respondents 1 to 3 in favour of the sixth respondent enabling them to construct a multi-storied building is in violation of the Municipal Corporation building Bye-laws (for short "the Byelaws) and Multi-storied Building Regualtions, 1981 (for short" the Regulations"). No permission to construct a multi-storied building can be granted if the area is less than 2000 sq.metres, whereas the area where permission is granted is only about 1725 sq.yards i.e., about 1442.56 sq.metres i.e., far below the required extent. The site where permission is granted is surrounded by buildings on all the sides except an opening towards the western side through a passage of 10 feet width which abuts the petitioners' buildings all along. The proposed construction is in gross violation of the Multi-storied Building Regulations, 1981, because, multi-storied building activity cannot be carried on a road where the width of which is less than 40 feet wide. Construction if allowed to proceed would cause immense damage to the adjacent property and 10 feet passage will not be sufficient to cater the needs of the vehicle owners who visit the multi-storied complex and petitioners who are adjacent owners. Further, premises bearing M.No.4-1-1225 falls within Zone Nos.6 and 7 which is a prohibited zone for construction of multi-storied building as per the Master Plan. Petitioners 3 to 5 who have been brought on record as LRs of the first petitioner are enjoying the easementary rights to let out drain which passes through the open space of 10 feet. The writ petition was got amended by raising

following additional grounds as per the orders passed in WPMP No.1646 of1995 dt.30-1-1995, namely, respondents 5 and 6 had failed to obtain a clearance certificate from the Director of Fire Services as the ground coverage of the building is more than 500 sq. metres, which is in violation of Bye-law No.21; entrance and exit is less than 9 metres, whereas the minimum radium required is 15 metres; Regulation Nos.7, 7.2.1, 7.2.2 and 8 of Bhagyanagar Urban Development Authority Zoning Regulations had been violated; Municipal Corporation of Hyderabad has no jurisdiction or authority to grant permission to construct a multi-storied complex which is more than 1 + 1 floor on enacting A.P. Urban (Development) Act, 1975 (for short "the Development Act") and if the said construction is allowed to be proceeded with, the rights of the petitioners who are neighbours have been impaired, therefore the same cannot be allowed.

In opposition to the writ petition, the Additional Chief City Planner, Municipal Corporation of Hyderabad, Hyderabad filed a counter-affidavit on behalf of the respondents 2 and 3 stating that the building in question is not a multi-storied building and the Regulations have no application. The width of the passage as 10 feet as stated by the petitioners is not correct and it is 12 feet wide and there is no requirement of 15 feet width, which is a part and parcel of the plot and not a passage. If the petitioners' rights have been violated, the same cannot be agitated under Article 226 but same can be agitated only before the civil court. The second petitioner who constructed a building unauthorizedly in the area purchased suffered a decree from the civil court as per the counter allegations of the sixth respondent; therefore, the petitioners have not approached the court with clean hands. The writ petition is squarely motivated and it has been filed to thwart the construction of the building as per the sanctioned plan by the sixth respondent. The sixth respondent applied for permission for Group Housing as per G.O.Ms.No.310 Municipal Administration dt.11-5-1993

and the said permission was granted as per the Building Bye-laws and Zoning Regulations of 1981 as amended by the Government from time to time. The site is abutting 60 feet wide road as per the Zonal Development Plan and the permission was granted for construction of residential flats on stilt for parking plus 4 upper floors, which is as per the scheme. As the building is not hazardous, Bye-law No.32 (b) has no application. The Master Plan and Zonal Development Plan has been prepared by Hyderabad Urban Development Authority (HUDA) for the orderly development within the HUDA limits. The task of implementation of development plans is entrusted to the MCH and no special permission as such is required by MCH from HUDA. Moreover, as per G.O.Ms.No.310, HUDA is represented in the Committee for issuing permission in favour of the sixth respondent. The construction permission granted in favour of the sixth respondent is strictly in accordance with the Bye-laws and the permission which was granted do not fall within the meaning of multi-storied building and as it is not a multi-storied building, no objection certificate from the Fire Service is necessary.

Respondents 4 and 5 filed a counter-affidavit admitting the fact of the sixth respondent making the application for construction of a stilt plus 4 upper floors for residential flats and entering into an agreement of sale to purchase the property by R-5, who empowered under the power of attorney to take necessary steps for approval of the plans etc., submitted by the sixth respondent to the Municipal Corporation of Hyderabad. They denied about the averments made in the petitioners' affidavit that R-2 expressed dissent in granting permission and the approval of plans on the pressure exhorted. The plans which were originally submitted in April, 1994 were finally approved subject to various conditions on 5-9-1994. Since approved plans are not for the construction of multi-storied building within the meaning of the Regulations, approval accorded is in accordance with

the Rules and Regulations which were in force. The proposed building is not on to the main road and is in fact 70 feet away from the main road and passage is about 13 feet in width and the main road is about 36 feet and as per the Master Plan it is being considered as 60 feet road. Since old sewerage connections have become defunct new sewerage line is in existence in front of the petitioners' house.

The sixth respondent filed a separate counter-affidavit stating that the second petitioner purchased one of the buildings under a sale deed dt.21-10-1975, whereas the first petitioner purchased the another on 31-5-1997. The vendor retained exclusive rights in the said passage. The width of the said passage was shown as 12'-6" in the plan annexed to the title deed of petitioner No.1. In actual it is 12'-4" at the entrance and 13'-7" at the end towards the building, the average width is being 13 feet all along. Petitioner No.2 constructed a balcony projecting to the passage leading to the main building. His predecessor in title filed OS No.652/81 on the file of XI Assistant Judge, City Civil Court, Hyderabad for mandatory injunction directing petitioner No.2 to remove the encroachment and for restraining her from infringing the plaintiffs' rights in respect of the passage and the said suit was decreed on 26-10-1988. Against which petitioners preferred AS No.111/89 on the file of Chief Judge, City Civil Court, Hyderabad, which is pending. When the petitioners approached the sixth respondent for settlement, which was not acceptable to the sixth respondent, the present writ petition came to be filed. It is further stated that in accordance with the Master Plan, the existing 36 feet wide road is widened to 60 feet by surrendering 12 feet by the owners on either side and accordingly the sixth respondent surrendered 12 feet of the passage, so as to facilitate compliance with the Master Plan, but the petitioners are resisting the same. The sixth respondent applied for permission to construct residential flats on stilt for parking + four upper floors to the second respondent on 31-1-1994. The proposed

construction does not come within the definition of multi-storied building as amended from time to time. The alleged violations if any are only in case of a multi-storied building and not to the structures proposed by the sixth respondent as sanctioned by the authorities. After obtaining sanction, the officials of the Municipal Corporation of Hyderabad are frequently inspecting the progress of the construction and satisfied that there is no violation in proceeding with the construction and accordingly prayed for dismissal of the writ petition.

Sri Challa Sitaramaiah, learned senior counsel appearing for the petitioners urged the following points:

1. The building for which permission is granted is Multistoried Building and the permission is in clear violation of the Bye-Laws and the Regulations.
2. The Municipal Corporation of Hyderabad (MCH) has no authority or power to grant permission. It is the A.P. Urban Area Development Authority which could exercise the power as the delegation is not valid.
3. The building is located in the prohibited area for construction of Multistoried Buildings.

The point No.1 was amplified in this manner.

The stilt and four floors which were permitted under the permission come within the meaning of word 'Multistoried Building' as per Regulation 2(v) of the Regulations. Since the Byelaws apply to the entire area as per Byelaw 1.2, Regulations are in addition to Byelaws as per Regulation 3(a) (b) of the Regulations. The word 'floor' has been defined in Municipal Byelaws. As per the note appended to the definition 'floor', the sequential number of floor shall be determined by its relation to the determining entrance level. As per the said note floor is at or wholly above ground level the lowest floor in the building with direct entrance from the road/street be termed as floor 1. The other

floors above floor 1 shall be numbered in sequence as floor 2 floor 3 etc. with number increasing upwards. Since the stilt had direct entrance from the road/street which has to be treated as ground floor under the Regulations. Since “ground floor” has not been defined under the Regulations the dictionary meaning has to be taken for determining what the “ground floor” is. If the same is taken into consideration the building for which permission is sanctioned is a Multistoried Building and have to be satisfied the conditions enumerated in the Regulations which prohibit Multistoried Buildings in certain restricted zones. As the permission granted is in the restricted zone and the same is not in conformity with the Regulations, the same has to be set aside.

Per contra, Sri Ganta Rama Rao, learned standing counsel for the Municipal Corporation would submit that since the height of the building is less than 15 meters Corporation has not insisted permission from the Fire Service Authority. The building permission which was granted is in accordance with the MCH Byelaws.

Sri C.Kodandaram, learned counsel for respondents 4 to 6 did not put challenge to the submission made by learned senior counsel for petitioners but, however, would contend that the building permission which is granted is within the definition of “Multistoried Building” as defined under Regulation 2(v). Since the height of the building is less than 15 meters the stilt cannot be treated as ground floor and permission which is obtained is stilt + four floors. Hence, MCH is competent to accord permission which is accordingly granted.

It is rather distressing to note when learned senior counsel, who appeared on behalf of the petitioners, and who presented his argument with admirable objectivity and clarity, acknowledged as he had to, none of the counsel appearing for the respondents were present. In the process this Court is deprived of the required

assistance from them on the points so argued by the senior counsel. It is needless to say an advocate who accepted the brief is under obligation not only to defend their client's case and is duty bound to clarify the controversy raised.

Before answering point No.1 it is advantageous to notice the word "Multistoried Building" as defined under Regulation 2(v) of the Regulations which reads thus:

> 'Multistoried building' means and includes all buildings with more than four floors (including the ground floor) or whose height is 15 meters or more, measured from the average level of the Central line of the street on which the site abuts, provided that staircase rooms lift rooms, chimneys and elevated tanks above the top most floor and architectural features shall not be included in the number of floor in calculating the height of the building. The total height of such additional construction shall not exceed the average floor height of the building".

'Floor' as defined under Bye-law 1.2 of the Byelaws reads as under:

> "Floor: means the lower surface of a storey on which one normally walks in a building. The general term 'floor' unless otherwise specifically mentioned shall not refer to a 'mezzaine floor;
> Note: The sequential number of floor shall be determined by its relation to the determining entrance level. For floors at or wholly above ground level the lowest floor in the building with direct entrance from the road/street shall be termed as floor1. The other floors above floor1 shall be numbered in sequence as floor 2 floor 3 etc. with number increasing upwards."

The word "ground floor" used in the definition of Multistoried Building has not been defined under the Regulations. This Court has to fall back upon the dictionary meaning of 'ground floor'.

The Random House Dictionary of the English language 9th Edition defines ground floor as "*the floor of a building nearest to ground level*". The words and phrases Permanent Edition, Volume 18A, Gone—Gyrotiller defines the word ground floor as "*the basement should be regarded as the ground floor*" (Isaacs v. Dawson 75 N.Y.S.

337). In ***FOOT v. HODGSON*** (Vol.XXV Q.B. P.160) the judge of the City of London Court rejected the award of surveyors made under Section 85 of the Metropolitan Building Act, 1855, when the defendant proposed to rebuild the premises which were burnt down on the ground that the topmost floors were "stories" within the meaning of first schedule to the Metropolitan Building Act, 1855 and if they were "stories" thickness of the party wall between the plaintiff's and defendant's premises was insufficient and did not comply with the requirements of the schedule and accordingly when the defendant decided to pulled down parted wall and rebuild it of an increased thickness and gave notice to the plaintiff, he objected to the proposed rebuilding of the party wall on the ground that it will be injuries to his trade and also unnecessary; and that the two floors bounded by the sloping roof were not "stories" within the meaning of the schedule and if these were excluded from the calculation, the party wall as it stood was of sufficient thickness for the building which the defendant proposed to erect. To resolve the differences the parties appointed two surveyors who made an award, by which they found that the party wall was not of sufficient strength for the intended building. Against which the plaintiff appealed to the Judge of the City of London Court who set aside the award of the surveyors. On the defendant's appeal Queen's Bench while setting aside the judgment of the judge of the City of London Court restored the award and held that the country court was wrong in holding as a matter of law that a story must necessarily be inclosed within four vertical walls and as a consequence rooms built in the roof could not be considered as forming a story.

Having regard to the meaning of 'ground floor' referred to above 'stilt' has not been defined under the Multistoried Building Regulations. 'Stilt' can be treated as ground floor for the purpose of defining Multi Storied Building. Having regard to the conclusion that the Multistoried Building, referred to above, refers the ground floor, the contention of the learned senior counsel that the

ground floor has to be treated as a floor for defining the Multistoried Building is well founded, and the submission made by the counsel for respondents 4 to 6 since it is a stilt floor it cannot be treated as a ground floor cannot be accepted.

In the case on hand, petitioners in their affidavit asserted that Multistoried Building cannot be constructed in a demarcated and restricted zone. The premises where construction permission was granted is in prohibited zone for construction of Multistoried Building and the permission is in gross violation of Regulations. The said fact has been accepted by HUDA in its counter that Zones 6 and 7 come within the prohibited area for construction of Multistoried Building and further stated that permission accorded is not for Multistoried Building. Hence, the prohibition referred to above will not apply to the permission sanctioned by respondent No.2.

The further submission made by the learned counsel for respondents 4 to 6 that height of the building is not more than 15 meters, therefore, it cannot be treated as Multistoried Building and authorities cannot insist the approval of the Fire Services Authority etc. for granting permission is a fallacy. Once it is admitted that the permission granted is ground + four upper floors, it satisfies the definition of Multistoried Building and since the permission granted by the Municipal Corporation is not in accordance with Regulations, and unless the zonal regulations have been relaxed no permission can be granted for construction of Multistoried Building in favour of respondent No.6. In view of the same, grant of permission by the Municipal Corporation is illegal and it is accordingly declared that the same is not in tune with the Regulations.

Learned senior counsel elaborated point No.2 as under:

It is not disputed that MCH granted permission, which has no authority to sanction, and the Authority has not delegated power under

Section 56 of the Development Act to the Municipal Corporation for granting permission. Any delegation must be in conformity with the Acts and Rules. While enacting the Act Chapter XIII of the Hyderabad Municipal Corporations Act, 1955 was repealed. On such repeal it is only the Urban Area Development Authority shall have the power of granting permission. Unless such power is delegated through a notification to such officer or local authority the same must be exercised by the Authority only. The word 'Authority' has been defined under Section 2(b) r/w 3(3) which consists of 15 members including the Chairman and the Vice Chairman. The Vice Chairman is not competent to delegate power on behalf of Authority unless the Authority itself resolves to delegate the power under Section 56(2) of the Act and the delegation is notified and published as per Rules 6 and 7 of A.P. Urban Development Authority (Hyderabad) Rules, 1977. In the absence of any proper delegation the power exercised by the MCH as delegatee for granting permission is without any authority. The power of delegation is meant to discipline the procedure prescribed under the statute for taking a decision to delegate the power and it must be strictly followed otherwise it becomes autocratic. To buttress his submission reliance is placed on the following judgments:

1. ***BABU VERGHESE v. BAR COUNCIL OF KERALA***[1]
2. ***DEEP CHAND v. STATE OF RAJASTHAN***[2]
3. ***IN RE SUBRAHMANYAM***[3]
4. ***MAHENDRA LAL v. STATE OF U.P.***[4]
5. ***SMT. M.RAGAMMA v. STATE OF A.P.***[5]
6. ***M.L.BUILDERS PVT. LTD. V. RADHEY SHYAM SAHU***[6]
7. ***V.M.KURIAN v. STATE OF KERALA***[7]

Learned standing counsel for the Municipal Corporation would contend that on coming into force of the Development Act granting of lay out alone is vested with HUDA but not building permission. Once the task of implementation of development plans is entrusted with the MCH, no permission is required to be taken by MCH from HUDA. As per G.O.Ms.No.310 HUDA is represented in the Committee for issuing permission which can be impliedly approved by the HUDA.

Sri T.Niranjan Reddy, learned standing counsel for HUDA would contend that grant of building permission within the Corporation limits vests with the Municipality. Even if there is no delegation by HUDA previously, once the permission is granted in accordance with the MCH Byelaws, the same has now been delegated to the MCH with retrospective effect as per the Notification which was published under the Andhra Pradesh Gazette Part-II Extraordinary dated 07-03-2006 during the course of hearing of writ petition. As the permission accorded is not for Multistoried Building, the prohibition under Regulation 2(v) would not be attracted to the permission granted.

Learned counsel for respondents 4 & 5 while supplementing the same would contend that power to grant building permission vests with the MCH.

Sri C.Ramakrishna, learned counsel for respondent No.6 adopted the same.

Sri N.Subba Rao, learned counsel for the implead parties—respondents 8 to 31, who purchased the flats, supported the argument of counsel for respondents 4 to 6.

Section 2(3) and (28) defines the words '*building*' and '*land*'. Chapter XII of the HMC Act deals with Building Regulations and the procedure to be followed for erection of building and for grant of building permission. The HMC Act applies for grant of building

permission whereas for development of the land Development Act will apply. What is repealed from by Development Act is Chapter XIII but not Chapter XII of the HMC Act. Chapter III of the Development Act deals with Master Plan and Zonal Development Plans. Section 6(2) deals with Master Plan for the development of area whereas Section 7 (2) deals with Zonal Development Plan. Section 8 prescribes the procedure to be followed in preparation and approval of plans. Chapter IV deals with development of lands and Section 14 of the Act shall be read in conjunction with Section 13 which deals with declaration of development areas and development of land in the said areas. Once Section 14(3) specifically refers to clause (d) of sub-section (2) of Section 7, which requires application for permission to the cases covered by clause (d) of sub-section (2) but not other cases.

In order to appreciate the submission made on point No.2 it may be necessary to give an extract of Statement of Objects and Reasons of the Development Act.

> " The population of the cities of Hyderabad and Secunderabad, has been growing rapidly since the formation of the Andhra Pradesh State with effect from 1st November, 1956. the industrial development has not been dovetailed with urban development and town planning, and as a result, slums has developed haphazardly in the city. The growth in industry in the State also in hampered as the areas where industries have been located, could not be properly developed in a planned manner, providing the required amenities, which attract the industrialists from the various parts of the State and from the other States.
>
> In Appendix IV of the 37th Report of the Estimates Committee (V Lok Sabha), among others, the Estimates Committee recommended that whenever any large scale housing scheme is taken up for execution, a high powered authority should be designated and entrusted with the task of intersectoral planning which should oversee all the various activities connected with the provision of infrastructure facilities and maintain coordination between various agencies. For this purpose, the Committee recommended the setting up of development authorities to metropolitan cities and other large towns, with power to oversee the various

activities connected with housing, etc. For some time past the proposal relating to the setting up of Urban Development Authorities for the cities of Hyderabad and Secunderabad and for other areas having urban complex in the State, for purpose of looking after the planning and development has been engaging the attention of the State Government. Further, the six point formula emphasized the importance of the planned development of the capital city and contemplates the constitution of a suitable Capital Development Authority.

It has therefore decided to constitute in the first instance, an Urban Development Authority for the area covered by the Municipal Corporation of Hyderabad and also the surrounding areas. Later on, similar Urban Development Authorities will be set up for other urban areas in this State such as Visakhapatnam, Vijayawada and Warangal.

This Bill is to give effect to the above decision.

The salient features of the Bill are:-

(i) The establishment of an Urban Development Authority for each development area with powers and having independent status like any other local authority and with powers to borrow loans from the H.U.D.Co., L.I.C. and other financial institutions for purpose of carrying on the tasks devolved on it.

(ii) to promote and secure orderly development of the metropolitan area of the cities of Hyderabad and Secunderabad and other fast growing urban complexes in the State;

(iii) to prepare a Master Plan for the development area for which Master Plan has not been prepared, so far, and also to prepare zonal development plans;

(iv) to control the use of land for various purposes, by acquisition, development and disposal of land and to execute the developmental works to the extent of funds available with it and also by coordinating and regulating the activities of various services of the State and the Central governments and other local authorities; and

(v) to vest in the Urban Development authority the vacant land belonging to the Government and situated in the development area, within the jurisdiction of such Authority, subject to such conditions as may be specified by the Government, for the purpose of control and management of the development area."

It is not in dispute that until the Development Act has been

enacted the HMC Act, 1955 authorizes that building permissions were to be obtained under the HMC Act. 'Building' has been defined under Section 2(3) of the HMC Act which includes a house, out-house, stable, latrine, godown, shed, hut, wall, fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever. "land" has been defined in Section 2(28) which includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. Chapter XII of the HMC Act, namely Sections 428 to 463 deals with building regulations; whereas Chapter XIII of the HMC Act deals with planning and development. Section 464 as it stood prior to repeal deals with plans and layouts and Section 465 deals with publication of sanctioned plan. Section 466 deals with revocation of development plan sanctioned under Section 464; whereas 467 deals with erection of building in accordance with the development plan sanctioned under Section 464. Section 468 deals with development of any area under the said Chapter and the land which needed to be public purpose under the Land Acquisition Act. Section 469 authorizes the Commissioner to make draft improvement scheme; whereas Section 470 empowers the Commissioner to exclude any part of the area included in the notification referred to in Section 469. Section 471 deals with the procedure on completion of scheme; whereas Sections 472 and 473 creates certain rights to the owner of the land which has to be notified for the purpose of development, who can demand acquisition on issuance of notification or withdrawal by the Corporation after the lapse of certain period. Section 474 authorizes the Corporation to consider improvement scheme and to approve or disapprove and as soon as the Corporation has approved the scheme the Commissioner shall apply to the Government for sanction of scheme and on receipt of sanction declaration the same has to be

published in the manner prescribed under Section 476. If the Corporation fails to acquire the land, owner can call upon Corporation to acquire it or to withdraw from proposal under Section 477. Sections 478 and 479 deal with method of calculation of betterment charges and procedure for determining the charge.

On enacting the Development Act, as noticed above, Chapter XIII of the HMC Act has been repealed and procedure has been prescribed for development of any land. Chapter III of the Development Act deals with Master Plan and Zonal Development Plans. Section 6(1) enables the Authority to carry out civic survey and prepare Master Plan for the development area concerned. Section 6(2) deals with Master Plan which reads as under:

> "6(2)(a) define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (either after carrying out development thereon or otherwise) and the stages by which any such development shall be carried out; and
> (b) serve as a basic pattern of frame-work within which the Zonal Development Plans of the various zones may be prepared.

Section 7 of the Development Act authorizes the Authority to proceed with the preparation of zonal development plan for each of the zones into which the development area has been divided. Sub-Section (2) of Section 7 deals with zonal development plan. Section 8 deals with procedure to be followed in preparation and approval of plans. Sub-Section (1) of Section 8 and in Sections 9, 10, 12 and 15 the word '*plan*' means the Master Plan or the Zonal Development Plan for a zone or both, as the case may be. Section 11 deals with any plan already prepared and sanctioned under the HMC Act or under the Town Planning Act before the commencement of Development Act shall be deemed to be a Master Plan so prepared and published by the Authority and sanctioned by the Government subject to such alterations and modifications as may be considered necessary under

the Act. Under Section 12 the Authority may make such modifications to the plan as it thinks fit and the procedure to be followed. Chapter-IV deals with development of lands. Section 13 deals with development areas and development of land after the commencement of the Act; whereas sub-section (4) of Section 13 puts restriction to undertake the development. Section 14 requires an application to be made by any person desiring to obtain permission referred to under Section 13 to be followed. Section 2(o) deal with '*urban area*' which means the area comprised within the jurisdiction of the Municipal Corporation of Hyderabad or of any Municipality constituted under the Andhra Pradesh Municipalities Act, 1965 or any other area which is notified to be an urban area under the Act. Section 14 (3) which specifically refers to clause (d) of sub-section (2) of Section 7, permits the Authority to make an enquiry on receipt of application for permission under sub-section (1) of section 14, or in relation to any other matter, shall by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission.

The word 'land' as defined under Section 2(28) of the HMC Act and Section 2(i) of the Development reads as under:

| | |
|---|---|
| 'land' includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. | 2(i) 'land' includes benefits to arise out of 'land' and things attached to the earth or permanently fastened to anything attached to the earth. |

There is a material difference in the definition of 'land' defined under the HMC Act and Development Act, referred to above.

Section 7 of the Development Act deals with zonal development plans, which reads thus:

> 7 (2) (d) in particular, contain provisions regarding all or any of the following matters, namely—
>
> (i) x x x
>
> (ii) x x x
>
> (iii) the development of any area, into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;
>
> (iv) the erection of buildings of any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;
>
> (v) to (viii) x x x x x
>
> (ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or building designed for particular purposes in the locality;
>
> (x) & (xi) xx x x
>
> (xii) any other matter which is necessary for the proper development of the zone or any other area thereof according to plan and for preventing buildings being entered haphazardly in such zone or area;

The word 'development' has been defined under section 2(e) of the Development Act which reads as follows:

> 'Development' with its grammatical variations means the carrying out of all or any of the works contemplated in a master plan or zonal development plan referred to in this Act, and the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land and includes re-development.

In exercise of the powers conferred under Section 56(1) of the Development Act the Authority delegated the powers vested in it to the Special Officer, Municipal Corporation of Hyderabad for grant of permission in conformity with statutory master plan/zonal development plan and zoning regulations. The Authority through its letters dated 15-01-1986, 04-11-1986 and 22-01-1987 further through its letter No.8131/MPU/HUDA/82 dated 02-04-1987 validated the powers delegated earlier for a further period of one year or until further notice which will commence from 01-04-1987. The delegation of powers admittedly has not been notified and the same was notified with retrospective effect through Notification in the A.P. Gazette dated 04-

03-2006, as referred to above.

Learned senior counsel would submit that in the absence of delegation of powers as contemplated under the Act and Rules, virtually there is no delegation of powers to the MCH in the eye of law and the MCH is denunciated to grant any such permission. Numerous judgments were cited by the learned counsel for the said proposition. It is appropriate to briefly refer those decisions.

In ***BABU VERGHESE v. BAR COUNCIL OF KERALA*** (1 supra) it was held that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. In ***DEEP CHAND v. STATE OF RAJASTHAN*** (2 supra) the Supreme Court was in full agreement with the decision of ***NAZIR AHMAD V. KIND-EMPEROR*** (AIR 1936 PC 258) where the Judicial Committee quoted and approved the well recognized rule that where power is given to do a certain thing in a certain way, that thing must be done in that way or not at all, and other methods of performance are necessary forbidden. In the case of ***IN RE SUBRAHMANYAM*** (3 supra) it was held that the notification has not been published in the Fort Saint George Gazette corresponding to the Nellore Gazette and the relevant notification of the Collector in the Nellore Gazette without its being published in the Fort Saint George Gazette is not valid. Since the notification of the Collector fixing the controlling rate of the salt has not been published the conviction and sentence are set aside and the accused is acquitted. In ***MAHENDRA LAL v. STATE OF U.P.*** (4 supra) the notification issued under Section 4 of the Forest Act and duly published in the Gazette was subsequently modified by the Government. It was held that since the modification of the same has not been published in the manner prescribed that modification not effective unless published in the Gazette. Therefore, the deemed exclusion under the Government order is of no effect. In ***SMT. M.RAGAMMA v. STATE OF A.P.*** (5 supra) this court held that

modification to the master plan, modifying the land use, after consultation with the Urban Development Authority, shall be published in the Andhra Pradesh Gazette in such form as the Government may deem fit. Since the record does not disclose any procedure having been followed by the Government as contemplated in the mandatory language in Rule 13-A of the Urban Development Authority Rules, 1977, the exemption granted and consequential construction were declared as illegal.

There is no quarrel with the proposition of law as stated in the above judgments. As it is an accepted principle that any delegation of powers in exercise of statutory power should be in conformity with the statute but not otherwise, the said delegation if is not in compliance with the statute, there cannot be any delegation at all.

The dominant object of enacting Development Act is to provide for the development of urban areas in the State of Andhra Pradesh according to plan and matters ancillary thereto.

Section 5 of the Development Act deals with object and powers of the Authority. The object of the authority shall be to promote and secure the development of all or any of the areas comprised in the development area concerned according to plan and for that purpose, the authority shall have the power to acquire, by way of purchase or otherwise, hold, manage, plan, develop and mortgage or otherwise dispose of land and other property, to carry out by or on its behalf building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewerage and control of pollution, other services and amenities and generally to do anything, necessary or expedient for purposes incidental thereof.

Chapter-IV of the Development Act deals with Development

of Lands. Section 13 envisages declaration of development areas and development of land in those and other areas; whereas Section 14 deals with application for permission by the person desiring to obtain the permission referred to in Section 13 and application should be in writing to the authority in such form and containing such particulars in respect of the development to which the application relates *as may be determined by regulations*. Section 57 of the Development Act deals with effect of other laws on enacting the Development Act, which reads as under:

> 57. Effect of other laws:- (1) Nothing in this Act shall affect the operation of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956.
> (2) Save as otherwise provided in sub-section (6) of Section 42 or sub-section (7) of Section 43 or sub-section (1) of this section, the provision of this Act and the rules and regulations made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law.
> (3) Notwithstanding anything in any other law—
> (a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reasons only of the fact that permission, approval or sanction required under such other law for such development has not been obtained.
> (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

Multi-Storied Building Regulations, 1981 were framed in exercise of the powers conferred by sub-section (1) of Section 59 of the Development Act. Regulation 4 contemplates making an application for approval of sites and buildings to construct or reconstruct or alter a multistoried building; whereas Regulation 5 envisages approval of Director of Fire Services, fees and cases prior Clearance of Director of Fire Services of Andhra Pradesh before permission is granted to the Multistoried building; whereas Regulation 7 contemplates the

Municipal Corporation of Hyderabad shall, while according their approval or permission follow the code of practice and standard requirements recommended by the National Building Code of India, 1970. Regulation 12 deals providing parking and parking facilities to the satisfaction of the Commissioner, Municipal Corporation of Hyderabad, Vice-Chairman, Bhagyanagar Development Authority and conforming to the specified in Appendix-B to the Regulations. Regulation 13 deals with Architectural Control. Sub-Regulation (2) of Regulation 13 contemplates the design and plan shall be scrutinized by a Committee for sanction of the plan by the MCH. Regulations do not contemplate making of application to the Authority for its approval and scrutiny, but it is only MCH or the Committee constituted has to scrutinize the said application made for construction of Multistoried Building. On publication of Regulations it can be presumed that the Authority has delegated its power of granting building permission in favour of the Commissioner, MCH. Regulation 1.3 of the Bhagyanagar Urban Development Authority Zoning Regulations, 1981 envisages that these regulations shall be read with building byelaws issued under Section 586 of the HMC Act. All Regulations and Byelaws or parts thereof which may be in conflict with the above regulations will be invalid to the extent they are so inconsistent with the effect from the date from which the said regulations come into force i.e. 05-09-1981.

Undisputedly Chapter-XII of the HMC Act, which deals with building regulations and notices regarding erection of building, has not been repealed by the Development Act. Sub-section (1) of Section 14 of the Development Act ordains making an application in respect of development will be determined by regulations. As already noticed, Regulation 4 of Multistoried Building Regulations contemplates making an application for approval of sites and buildings in addition to the particulars required under Building Bye-laws, which requires clearance from the Director of Fire Services before the building plans

are approved by the local body. It is the duty of the Municipal Corporation of Hyderabad while according approval or permission shall follow the standard requirements recommended by the National Building Code of India under Regulation 7. Regulation 14 contemplates that any construction or reconstruction of a multistoried building shall be permitted only within the area approved for the construction of multistoried buildings in any development plans of Bhagyanagar Urban Development Authority (BDA) or the MCH and shall not exceed the maximum number of storey or maximum height prescribed for the individual areas. Once the Regulations are published and notified in the Gazette authorizing the Commissioner, Municipal Corporation of Hyderabad to receive the applications and scrutinize the same as per the Bye-laws of the Corporation framed in exercise of the powers conferred under Section 589 of the HMC Act, the provisions of HMC Act which regulates construction of the building within the Corporation limits and also to see that construction of such building shall be in conformity with Master Plan and Zoning Regulations as contemplated under the Development Act as a delegatee under the Regulations.

In ***Sarwan Singh v. Kasturi Lal***[8] Justice Y.V.Chandrachud *(as he then was)* spoke for the Court thus:

> "**...**When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration."

The Supreme Court after taking into consideration the conflict resolved in such cases by it earlier in ***Shri Ram Narain v. Simla Banking & Industrial Co. Ltd.***[9] where it was resolved the conflict by

considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing:

> "It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.
>
> .....Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act."

held in para-21 of its judgment as under:

> " For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one."

In view of the same, while repealing Chapter-XIII of the HMC Act the legislature in its wisdom has not intended to curtail the powers of Commissioner, Municipal Corporation of Hyderabad with regard to grant of permission. Even otherwise under Section 57 of the Development Act, if any permission is obtained from the Municipal Corporation as per the Regulations framed under the Development Act, it will be deemed to be a permission obtained under sub-section (3)(a) of Section 57 of the Development Act.

Section 11 of the Development Act deals with plans already prepared and sanctioned deemed to have been prepared and sanctioned under the Act, which reads thus:

> "Any general town planning scheme under the Andhra Pradesh (Andhra Area) Town Planning Act, 1920, any development plan under the Hyderabad Municipal Corporations Act 1955 or any Master Plan under the A.P. Municipalities Act, 1965, already prepared and published by the Local authority concerned and sanctioned by the

> Government before the commencement of this Act with respect to any area now forming part or whole of a development area under this Act, shall be deemed to be a Master Plan so prepared and published by the Authority and sanctioned by the Government subject to such alterations and modifications as may be considered necessary, under this Act."

A harmonious reading of Sections 7(2) (d), 11 and 13 make it clear that development of land within the developed area can be undertaken or carried out, only on necessary permission is obtained from the authority concerned i.e. if the land which was not so developed falls within the municipal area and a person who intends to develop the township or colony and the erection of building on any site in the said area and restrictions and conditions regarding open spaces to be maintained in conformity with the zoning development plan as per the Master Plan and development of land if undertaken contrary to Master Plan and Zonal Development Plan necessary permission has to be obtained from the development authority for modification to the plan in accordance with the provisions of the Act. The application for permission under Section 14 is with respect to development to which the application relates as may be determined by regulations. Regulations, referred to above, as defined under the Rules means the Regulations made under the Act by the Authority and includes Zoning and other Regulation made as part of the Act.

Having regard to the same whenever a land which is not covered by the development plan of HMC Act or which is not the subject matter of deemed development plan under the Development Act, then necessary permission has to be obtained from the Authority under the Development Act or from its delegatee to develop the said land in conformity with the Master Plan and Zoning Development Plan. When the land is not a developed land, for the said purpose, Authority can delegate its power for sanction of lay out and its development as per the Statement of Objects and Reasons, referred to above. When

once the land is already deemed to have been developed land under the HMC Act, which is deemed to be a Master Plan so prepared under Section 6 of the Development Act, the Commissioner, Municipal Corporation of Hyderabad is authorized to grant permission in conformity with the Master Plan and Zonal Regulations in the light of delegation of powers to it under the Multistoried Building Regulations as stated earlier.

In view of the same, the submission of the learned senior counsel that unless the Corporation is delegated of the powers to sanction building permission it is not authorized to grant permission cannot be accepted. Point No.2 is answered accordingly.

Once the building permission granted by the Municipal Corporation is a Multistoried Building, which is prohibited as per the Zonal Regulations, MCH and HUDA are under obligation to see that the construction so made should be in conformity with the Zonal Regulations. Once the permission is not in conformity with the Zonal Regulations that part of the construction has to be pulled down to see that the construction is in conformity with the Zonal Regulation Plan. As the construction of Multistoried Building is prohibited, it is for the MCH and HUDA to inspect the premises and call upon the respondents to remove such objectionable portion, which is prohibited under the Zonal Regulations and can act accordingly.

In result, Writ Petition is partly allowed, as indicated above. No costs.

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A.GOPAL REDDY,J.

Dt. 23--06--2006

Kmr/Murthy

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[1] (1999) 3 SCC 422

[2] AIR 1961 SC 1527

[3] AIR 1950 MADRAS 308

[4] AIR 1963 SC 1019

[5] 1989 (1) ALT 20

[6] (1999) 6 SCC 464

[7] (2001) 4 SCC 215

[8] ***(1977) 1 SCC 750***

[9] AIR 1956 SC 614